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Supreme Court, U.S
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No. 03-200

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF ARIZONA,
PETITIONER,

-vs-

EUGENE ROBERT TUCKER,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

REPLY BRIEF

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REASON WHY THE WRIT SHOULD ISSUE

ARIZONA'S SENTENCING STATUTE ENACTED AFTER *RING V. ARIZONA*, 536 U.S. 584 (2002), IS IRRELEVANT TO THE ANALYSIS OF WHETHER THE ARIZONA SUPREME COURT ERRED IN ITS INTERPRETATION OF *RING*.

Tucker has misconstrued the State of Arizona's argument. Tucker maintains that the State is advancing a bifurcated sentencing scheme contrary to the sentencing scheme recently enacted by the Arizona legislature in response to *Ring*. Arizona's current capital sentencing statute enacted after *Ring* is irrelevant to the analysis of whether the Arizona Supreme Court erred in the first instance by remanding this case for resentencing. The State is challenging the Arizona Supreme Court's holding that *Ring* mandates a remand for resentencing even though it found harmless error with regard to two aggravating circumstances. Arizona's current capital sentencing statute is simply immaterial to the question whether Sixth Amendment error in this case may be harmless under *Ring*.

Likewise, Tucker's suggestion that the Eighth Amendment plays a role in the analysis of the issue presented in the petition for writ of certiorari is misplaced. The State did not advance an Eighth Amendment argument in its petition because neither this Court in *Ring*, nor the Arizona Supreme Court in the instant case, relied on the Eighth Amendment in reaching its conclusion. The first sentence of Justice Ginsburg's opinion in *Ring* squarely identifies the constitutional amendment at issue: "This case concerns the Sixth Amendment right to a jury trial in capital prosecutions." 536 U.S. 584, 588. The only question before this Court is whether a finding of death eligibility through a determination of harmless error regarding at least one aggravating circumstance satisfies the Sixth Amendment under *Ring v. Arizona*.

Moreover, the Eighth Amendment requires the State to establish the existence of at least one aggravating circumstance in order to

narrow the class of persons eligible for the death penalty; it does not require that "the aggravating circumstances be further refined or weighed by a jury." *Blystone v. Pennyslvania*, 494 U.S. 299, 306–07 (1990). Thus, the Eighth Amendment is not implicated.

CONCLUSION

The Arizona Supreme Court's interpretation of *Ring* as requiring a jury determination of every sentencing factor (including additional aggravating circumstances, mitigating circumstances, and the weighing of aggravating and mitigating circumstances) inappropriately expands the Sixth Amendment beyond that required by *Ring*. The fact that the Arizona legislature chose to enact a statute that provides for jury sentencing is not determinative of what the Sixth Amendment requires. Accordingly, the State of Arizona respectfully requests that this Court grant the petition for writ of certiorari.

Respectfully submitted,

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